

9/4/2013 9:13 am

U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF THE EMPIRE STATE CARPENTERS  
WELFARE, PENSION, ANNUITY, APPRENTICESHIP,  
CHARITABLE TRUST, LABOR MANAGEMENT  
COOPERATION, AND SCHOLARSHIP FUNDS,

ORDER  
11-CV-3573 (ADS)(ARL)

Plaintiffs,

-against-

KE GREER INFRASTRUCTURE LLC,

Defendant.  
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**APPEARANCES:**

**Levy Ratner P.C.**

*Attorneys for the plaintiffs*

80 Eighth Avenue

8th Floor

New York, NY 10011

By: Owen M. Rumelt, Esq., Of Counsel

**NO APPEARANCE:**

KE Greer Infrastructure LLC

**SPATT, District Judge.**

On July 5, 2011, the Plaintiffs Trustees of the Empire State Carpenters Welfare, Pension Annuity, Apprenticeship, Charitable Trust, Labor Management Cooperation and Scholarship Funds (“the Plaintiffs”) commenced this action against the Defendant KE Greer Infrastructure LLC (“the Defendant”) seeking damages for breach of contract in violation of the Employees Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. (“ERISA”) and the Labor Management Relations Act of 1947, 29 U.S.C. § 141, et seq. (“LMRA”). In this regard, the Plaintiffs claimed that the Defendant failed and refused to make payments owed to the Plaintiffs for a period of October 1, 2006 through December 31, 2009, totaling \$5,178.64. By July 26, 2010, the Defendant allegedly owed \$11,611.21, which included delinquent contributions, accrued interest, liquidated damages and audit fees.

On January 13, 2012, the Clerk of Court noted the default of the Defendant, and on March 1, 2012, the Plaintiffs moved for a default judgment. On April 5, 2012, the Court referred this matter to United States Magistrate Judge Arlene R. Lindsay for a recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should be awarded, including reasonable attorney's fees and costs.

On July 30, 2012, Judge Lindsay issued a Report and Recommendation, recommending that the Court enter a default judgment against the Defendant, but deny the Plaintiffs' motion for an award of damages without prejudice to a renewal upon submission of a signed collective bargaining agreement between the parties for the relevant period and proper affidavits and/or declarations referencing the pertinent provisions of the Agreements which support an award of damages in this case. There were no objections filed to Judge Lindsay's Report.

On September 7, 2012, the Court adopted Judge Lindsay's Report and Recommendation in its entirety. The Court: (1) granted the Plaintiffs' motion for a default judgment as against Defendant KE Greer Infrastructure LLC and (2) denied the Plaintiffs' motion for an award of damages without prejudice to a renewal upon submission of a signed collective bargaining agreement between the parties for the relevant period and proper affidavits and/or declarations referencing the pertinent provisions of the Agreements which support an award of damages in this case.

On September 28, the Plaintiffs renewed their motion for entry of default judgment. With their moving papers, the Plaintiffs provided copies of the collective bargaining agreement and other relevant agreements. Accordingly, on October 27, 2012, the Court referred this matter again to Judge Lindsay for a recommendation as to (1) whether damages should be awarded, including reasonable attorney's fees and costs, and (2) whether any other relief should be granted. The Clerk of Court was to note the referral.

On August 8, 2013, Judge Lindsay issued a Report and Recommendation (the "Report") recommending that the Plaintiffs be awarded damages in the amount of \$16,290.31, plus additional

interest accrued on the unpaid contributions at the rate of \$3.14 per day from May 29, 2012, through the date of entry of judgment. (Report at 1.) On August 12, 2013, the Report was served by the Plaintiffs on the Defendant. To date, there have been no objections filed to the Report.

In reviewing a report and recommendation, a court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. §636(b)(1)(C). “To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.” Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Lindsay’s Report and finds it to be persuasive and without any legal or factual errors. There being no objection to Judge Lindsay’s Report, it is hereby

**ORDERED**, that Judge Lindsay’s Report and Recommendation is adopted in its entirety. The Court awards the Plaintiffs damages in the amount of \$16,290.31, plus additional interest accrued on the unpaid contributions at the rate of \$3.14 per day from May 29, 2012, through the date of entry of judgment; and it is further

**ORDERED**, that the Clerk of the Court is directed to enter judgment in favor of the Plaintiffs and against the Defendant KE Greer Infrastructure LLC in the amount of \$16,290.31, plus additional interest accrued on the unpaid contributions at the rate of \$3.14 per day from May 29, 2012, through the date of entry of judgment; and it is further

**ORDERED**, that the Clerk of the Court is directed to close this case.

**SO ORDERED.**

Dated: Central Islip, New York  
September 4, 2013

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge